



Australian Government

Defence Honours and Awards Appeals Tribunal

Hogan and the Department of Defence [2020] DHAAT 12 (30 July 2020)

File Number 2019/26

Re **Mr Michael John Hogan**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms Jane Schwager AO (Presiding Member)
Ms Naida Isenberg

Hearing Date 9 July 2020

DECISION

On 30 July 2020 the Tribunal decided to affirm the decision of the Directorate of Defence Honours and Awards that Mr Michael John Hogan is not eligible for the award of the Defence Long Service Medal.

CATCHWORDS

DEFENCE AWARDS – Defence Long Service Medal – evidentiary issues – reliability of pay records – “remunerated work” - balance of probabilities

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110VB(2)

Defence Regulation 2016 – Regulation 36

Commonwealth of Australia Gazette No S352, Letters Patent and Regulations for the Defence Long Service Medal, dated 10 July 1998

Commonwealth of Australia Gazette No S160, amendment to the Letters Patent and Regulations for the Defence Long Service Medal, dated 30 March 2000

Commonwealth of Australia Gazette No S2, amendment to the Letters Patent and Regulations for the Defence Long Service Medal, dated 3 January 2002

Chief of the Defence Force Determination, Minimum Periods of Annual Qualifying Service for the Defence Long Service Medal, dated 6 February 2013

REASONS FOR DECISION

Introduction

1. The Applicant, Mr Michael John Hogan seeks review of a decision by the Directorate of Honours and Awards of the Department of Defence (Defence) dated 29 October 2018 that he is not eligible for the award of the Defence Long Service Medal (DLSM). Mr Hogan asserts that his service in the Australian Army Reserve (ARES) between 31 July 1990 and 2 September 2016 qualifies him for the award. Defence's contention is that whilst Mr Hogan rendered 26 years, one month and three days ARES service, he does not have 15 qualifying years, as he did not complete the minimum annual obligation in each of 15 years of that service.

2. The question for the Tribunal is whether Mr Hogan achieved 15 years qualifying service during his enlistment years, between 31 July 1990 and 2 September 2016.

Tribunal Jurisdiction

3. Pursuant to s110VB(2) of the *Defence Act 1903* the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for an award in response to an application. Regulation 36 of the *Defence Regulation 2016* lists the defence awards that may be the subject of a reviewable decision. Included in the defence awards listed in Regulation 36 is the DLSM. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

Mr Hogan's Service Record

4. Mr Hogan served in the ARES from 31 July 1990 to 2 September 2016. Mr Hogan was enlisted into the Regular Army Infantry Division (RAINF), serving with 10/27 Royal South Australian Regiment. A Posting Order dated 17 July 2001, formally transferred Mr Hogan from RAINF to Australian Army Universities Regiment (Adelaide University) Pipes and Drums (Australian Army Universities Regiment).¹ On 21 July 2006 Mr Hogan was transferred to the Army Standby Reserve whilst completing his Nursing University Degree at Adelaide University.² On 2 September 2016 Mr Hogan discharged under DPR 70-SR 'Separated in Service Interest'.

5. For his service, Mr Hogan has been awarded the Australian Defence Medal.

¹ Posting Order dated 17 July 2001.

² Instrument Number 75 of 2006, 18 July 2006.

The Defence Long Service Medal

6. The DLSM was introduced by Letters Patent on 26 May 1998 for the purpose of:

... according recognition to persons who render long and efficient service as members of the Defence Force ...³

7. The Defence Long Service Regulation 3 dated 10 July 1998 provides:

3. The Medal may be awarded to a person who:

- (a) has given qualifying service for a period of at least 15 years or periods that, in total, amount to at least 15 years; and
- (b) has given at least 1 day's qualifying service on or after 14 February 1975.

8. Regulation 5 defines 'qualifying service' as follows:

(a) where the service was given as member of the Permanent Forces or the Reserve Forces - the member:

- (i) fulfilled the requirements specified in directions given by the Chief of the Defence Force; and
- (ii) gave efficient service; or
- (b) ...

9. Subsequently, on 30 March 2000 the Regulation was amended⁴ to provide a definition of 'efficient service':

Regulation 2

Efficient service means service determined to be efficient service by the Chief of the Defence Force.⁵

10. The Chief of the Defence Force (CDF) has not made any determination as to what amounts to "efficient service" for the purpose of the Regulation.

11. On 6 February 2013,⁶ the then CDF made a Determination in which he specified that the minimum periods of qualifying service for the ARES as follows:

- Until 30 June 1993 26 days
- 1 July 1993 – 20 April 2000 14 days
- From 20 April 2000 20 days⁷

12. The Determination also recorded that the days were to be remunerated at Defence rates of salary, unless they were approved voluntary unpaid Reserve service.

³ *Commonwealth of Australia Gazette No S352* dated 10 July 1998.

⁴ *Commonwealth of Australia Gazette No S160* dated 30 March 2000.

⁵ Regulation 3 was also amended, but the change is not relevant to this review.

⁶ On 3 January 2002, the Regulation was again amended, but the changes are not relevant to this review.

⁷ *CDF Determination* dated 6 February 2013.

13. To qualify for the DLSM, members are required to render service each “year”, which is calculated as a 12 month period from the anniversary date of enlistment.

14. There was no dispute that Mr Hogan completed 12 qualifying years. There were a further four years of service in which Defence said he did not render qualifying service, namely:

- 31 July 1993 to 30 July 1994 (1993-94)
- 31 July 98 to 30 July 1999 (1998-99)
- 31 July 2004 to 30 July 2005 (2004-05)
- 31 July 2005 to 30 July 2006 (2005-06)

15. There was no contention that any of his service while in the Standby Reserve from 21 July 2006 until his separation on 2 September 2016 attracted any qualifying service.

Evidence before the Tribunal

16. In addition to Mr Hogan’s Application for Review and supporting material, the Tribunal had before it Defence’s report dated 7 December 2019 (with attachments), extracts from Mr Hogan’s service records and PERS file, his competency log book, his attendance records and pay records. Mr Hogan had also provided an affidavit dated 28 November 2018 and a statutory declaration dated 9 January 2020.

17. When the Tribunal undertook a preliminary review of Mr Hogan’s pay and attendance records it noted a number of anomalies and gaps. On the 17 April 2020, the Tribunal wrote to Defence requesting clarification of aspects of Mr Hogan’s records.⁸ In particular, it sought records relating to the camps Mr Hogan claimed that he attended during his service and the omissions he had identified.

18. An explanation was also sought regarding courses included in his Member’s Attendance Summary not included in his competency log book and some not recorded in his ARES record. These included a recruit training course in December 1990, courses undertaken in August 1997 (B3 Holden and B4 Toyota Hiace skills) not listed in his Member Attendance Summary; and a five day course he attended in May 2000 not credited in full. The Tribunal sought a full copy of Mr Hogan’s Member Attendance Summary, noting that only four pages were initially made available. Further details were sought in relation to a number of other anomalies where pay records did not appear to correspond to attendance records. On the 14 May 2020, Defence provided the Tribunal with a detailed reply, a copy of which was provided to Mr Hogan.⁹ Defence’s response, so far as is relevant, is addressed below.

19. On 9 July 2020, the Tribunal heard evidence by telephone from Mr Hogan, who was self-represented, and submissions from Ms Jo Callaghan, Assistant Director of

⁸ Letter from the Tribunal to the Directorate dated 17 April, 2020.

⁹ Reply from Ms Petrina Cole, Director, DHA, dated 14 May 2020.

Service and Campaign Awards and Mr Wayne Parker, Manager, Service and Campaign Awards Assessments, representing Defence.

Mr Hogan's evidence

20. In his Application for Review Mr Hogan asserted that Defence had made a number of errors regarding the length of his service, particularly in relation to his Initial Entry Training (IET) and two “Rhino Charge” exercises. He contended that in 1993-94 - a year that records only 2 days of service – *‘I know I did most weekends as well as a 2 week field exercise’*.¹⁰

21. In his affidavit and statutory declaration Mr Hogan wrote that he believed that he has met all the requirements for the DLSM from his enlistment in July 1990 up to 2005.¹¹ He stated that he took part in *‘weekend, training, parade nights and annual field services in all years up until 2005’*, and, as he achieved the fifteen years qualifying service, he should be awarded the DLSM. Mr Hogan’s evidence focused on the disputed years 1993-94, 1998-99, 2004-05 and, to a lesser extent, 2005-06. He further noted that if it was not a field exercise, he was doing band exercises – often two weeks at a time.¹² He noted that he sought “leave” in June 2007 to undertake a degree at university.

22. In his statutory declaration Mr Hogan disputed the four years identified by Defence as non-qualifying years. For example, he stated that in his whole ARES career he never paraded for half a day in a year (as allowed for 1998-99) or two days in a year (as allowed for 2005-06). He also asserted that another soldier with a similar name to his was sometimes given his payslips and vice-versa but he was unable to provide proof (of attendance or pay) as he had moved several times over the years.¹³

23. Mr Hogan referred the Tribunal to his email correspondence with Defence in October 2018.¹⁴ In this email exchange, Mr Stephen O’Brien, Recommending Officer – Long Service Awards, of the Directorate, acknowledged errors relating to Mr Hogan’s IET course in 1990 (a year not in dispute) but also acknowledged “gaps” in pay records between 25/07/1993 and 14/03/1994 (relevant mainly to the 1993-94 year) as well as between 11/08/1998 and 07/12/99 (relevant mainly to the 1998-99 year). Mr O’Brien had observed the ‘Alchemy’ records and noted a period of non-effective service (NES) from 15 March 1999 to 6 December 1999. Mr O’Brien speculated that that could indicate a period of continuous full time service (CFTS). However Mr Hogan said he had never undertaken CFTS. Mr O’Brien also observed that it was possible for pay anomalies to occur across areas with consolidated pay centres.

¹⁰ Application for Review dated 16 November 2019.

¹¹ Affidavit of Michael John Hogan sworn 28 November 2018 and statutory declaration dated 9 January 2020.

¹² Ibid.

¹³ Ibid.

¹⁴ Email exchange with Mr O’Brien 11 October 2018.

24. The email exchange also informed Mr Hogan that Defence had been unable to locate anyone that had a similar name to him and requested any further evidence he might have regarding his assertion that his records were often mixed up with a person with a similar name.

25. In response to the clarification provided by Defence following the Tribunal's request, Mr Hogan replied to the Tribunal by email on the 4 June 2020 confirming that he was only applying for something he was entitled to. He again reiterated that throughout his career in the ADF there had been many omissions on his record as far as training days are concerned. He referred in particular to two Rhino Charge exercises that were missing, and that he was constantly having to spend time over the years chasing payment for days that were not paid to him.

26. At the hearing Mr Hogan conceded that he did not meet the qualifying service criterion for the 2005-06 year, although he said he attended more than the recorded two days. He said he relied only on having met the criteria during the 1993-94, 1998-99 and 2004-05 years. He reiterated his contention that the Defence records did not accurately reflect his service.

27. He noted that even his initial training when he enlisted in July 1990 was not accurately recorded in that he had paraded for a week and one weekend a month, even though his pay records do not commence until September 1990. He agreed that that year was not in dispute but pointed to this as an indication of the unreliability of the pay records.

28. As to the 1993-94 year he disagreed with the two days that had been recorded. He gave evidence, which was unchallenged, that he attended an annual field exercise consisting of a 14 day camp at Cultana in August/September 1993. He identified the year as being the year after he had attended K92. He recalled that they were quite active in undertaking 'infantry minor tactics' training. Alpha, Bravo and Charlie Companies were involved. During the camp he was preparing for his (specialist) course, and that was why he remembered it. This was one of the Rhino Charge exercises to which he had referred in his written material.

29. As to the 1998-99 year he said he was surprised that he was only recorded as having attended for half a day for that entire period. He said he attended another Rhino Charge camp at El Alamein (Cultana) in support of the battalion in July/August 1998. Bravo and Charlie Companies were conducting operations in and around Iron Knob near Port Augusta; his role was as a Unimog driver. He particularly recalled that he was tasked by the transport supervisor to drive a senior officer 'in a fast car' to Keswick Barracks one day and was given permission to stay at his home overnight. He recalled that he was living at the time in a house that he and his then partner had moved into in February 1997 and which they left at the end of 1999. He recalled refuelling the car using a Defence credit card and driving fast to return to the exercise.

30. He was asked about a ‘personal occurrence report’ dated 20 April 1999 which noted that he had last paraded on 14 February 1999.¹⁵ He said he had qualified through that year and did not recall being absent for a period of time.

31. He was also referred to a minute from the second in command dated October 1999 that he had been absent from three consecutive parades and had been declared “non-effective”.¹⁶ He said that he had been in hospital with septicaemia and that was the reason for his absence at that time. (It is observed that the minute is marked ‘cancelled’).

32. In relation to the 2004–05 year, he said that the recorded 11.5 days was incorrect. These, he said, represented mainly weekend attendances. He gave an account that, by that time, he had already transferred to the Adelaide University Pipes and Drums. He said the band had been invited in July/August 2003 to perform at the Edinburgh Military Tattoo in July/August 2004. Approval was not forthcoming for the band’s attendance, so the members, he said, privately raised funds to attend in a private capacity as the “South Australian Pipes and Drums”. On their return, there was some controversy about their attendance and the Warrant Officer responsible was disciplined. He said the band was supposed to perform at the Duntroon passing out parade that year, but as there was a move to dissolve the band, they did not attend for the parade, and instead he, and others, as available, spent two to three weeks moving all the band’s equipment from Keswick Barracks to 4 Training Group at Hampstead Barracks. These were training days. He estimated that he undertook in excess of 30 days service that year.

33. He said there were significant tensions over what had occurred and he ‘held on as long as he could’; it ‘was not a pleasant experience’. He was going to seek discharge but it was suggested he took some ‘time out’ and so transferred to the inactive reserve instead.

34. He said that throughout his service there had been errors with his pay. Sometimes, he said, he would not be paid ‘for months’. He complained to the platoon sergeant who, he understood referred it up the chain of command. He personally did not take it further. He understood it was ‘sorted out’ so was ‘shocked’ to see his pay records that did not record nearly as much time as he had paraded. He said the constant inaccuracy of the pay was ‘the norm’. He said though that at the time he was ‘not struggling for money’; he had a partner with a good job, and he also was employed. He said he did not join the Army for the money, but to serve the country. He also pointed to the ongoing mix up with another person whose name was similar to his.

Defence’s evidence and submissions

35. In its written submission,¹⁷ Defence, confirmed that following an examination of Mr Hogan’s application, service records, ADF pay record data, his service details on PMKeyS (and PMKeyS Global Payroll in relation to reserve days from 2012-2016)

¹⁵ Personnel Occurrence Report dated 20 October 1999.

¹⁶ Letter, Captain C.F. Miller to Mr Hogan, dated October 1999 (Cancelled).

¹⁷ Defence Report dated 17 December 2019.

Mr Hogan did not complete the minimum annual obligation in each year of service to qualify for the award of the DLSM.

36. The submission also noted that Defence had searched for unit attendance records to identify a member with a similar name to Mr Hogan, but were unable to identify such a person, but had offered to continue searching if Mr Hogan was able to provide further information. Mr Hogan, however, was unable to assist further.

37. At the hearing Defence was asked about some features of its record-keeping.

38. Defence was taken to the pay records which were relied on. In relation to the 1998-99 year the pay entries record 3 attendances – 11 August 1998, 16 March 1999 and 20 April 1999 – all 0.5 day attendances. The Defence representatives could not explain why only 0.5 of a day was allowed for that year.

39. Defence was also asked about its response to the Tribunal's enquiry about the course attended by Mr Hogan on 23-27 August 1997 and the omission of his attendance from his pay records. Defence conceded in its response to the Tribunal that the period counted towards service for the DLSM. However, as the 1997-98 year was not in dispute, Defence submitted that it had no bearing on the present matter. As to how that omission had occurred the response on behalf of Defence was that it was 'inexplicable'.

40. Defence was also taken to Mr O'Brien's observation that 'there appears to be a gap in pay records between 25/07/1993 and 14/03/1994', and 'there appears to be a gap in pay records between 11/08/1998 and 07/12/1999'. Defence was unable to assist as to how Mr O'Brien was able to identify a 'gap' in the Applicant's records, given that, as a reservist, there might not necessarily be a regular pattern of attendance. It was submitted that the observation went no further than, as a statement of fact, that there was no record of pay during those periods, and that the Tribunal should draw no inference as to the use of the term 'gap'.

41. As to its observation in its response to the Tribunal's written questions, that information in Defence pay data bases is targeted at attendances and pay history only, it was submitted that the Defence position was informed by what was on its data bases. However, it was prepared to review its position if Mr Hogan was able to provide other evidence that he had been paid.

42. Defence was asked about its attempts to locate someone with a similar name to Mr Hogan, with whom, he had contended, his pay was confused. Assistance had been sought from the unit, without success. While there were a number of ADF personnel with a similar name they were not necessarily in the Army.

43. Defence reiterated that its position relies on the pay records. It was noted that in order to be efficient service, that service must be remunerated.

Tribunal Consideration

44. The issue for the Tribunal is whether Mr Hogan served the required number of days on at least three of the four years that Defence asserted he had not completed the minimum annual obligation: 1993-94, (an additional 12 days) 1998-99 (an additional 13.5 days), 2004-05 (an additional 9.5 days) and 2005-06 (an additional 18 days). It is noted that Mr Hogan only pressed his contention in relation to the 1993-94, 1998-99 and 2004-05 years. The Tribunal must find that Mr Hogan had qualifying service in each of those years in order for his Application for Review to succeed.

45. Mr Hogan gave evidence in a forthright manner, but he conceded he did not have any evidence such as banking records to back up his recollection of his attendances. However, as the periods in question are 15 - 27 years ago, this is hardly surprising. He did not offer relevant contacts who could corroborate his attendance at parade nights, courses or camps.

46. In its response to the Tribunal's queries, Defence did not address the absence of attendance or pay records in relation to the camps which Mr Hogan said he attended, stating only that it had no records of his attendance or of his being paid. It is unknown what other enquiries Defence made, given that, from at least October 2018, Mr Hogan had raised his concerns about the deficiency in the number of days recorded for his ARES service.

47. The Tribunal found Mr Hogan to be a credible witness, who, has been consistent in his contentions. Curiously, at the hearing, none of Mr Hogan's evidence was sought to be tested by Defence. It is difficult, when Mr Hogan's evidence was in no way challenged, to come to any view other than to accept his evidence, except where there is other evidence which contradicts his account.

48. Mr Hogan's evidence was that he had attended the annual field exercise consisting of a 14-day camp at Cultana in August/September 1993. He identified the year as being the one after he had attended K92. He said he recalled that during the camp he was preparing for his (specialist) course. His service record¹⁸ and the relevant course report,¹⁹ however, note that his unrestricted driver course (the only relevant course after his IET) was not until September/October 1995 and it was in 1997 that he was recommended to be employed as a unit driver.²⁰ The Tribunal considers that these entries may suggest Mr Hogan was mistaken as to the year he attended the camp upon which he relied. For reasons discussed below, it was not necessary for the Tribunal to come to a final view in relation to the 1993-94 year.

49. As to the 1998-99 year, Mr Hogan gave clear evidence that he attended another camp at Cultana in July/August 1998. He particularly recalled that he was tasked by the transport supervisor to drive a senior officer to Keswick Barracks and was given permission to stay at his home overnight. He recalled that he was living at the time in a house that he and his then partner had moved into in February 1997 and left at the end

¹⁸ ADO Service Record, 8236256, dated 4 December 2019.

¹⁹ Course Reports dated 17 September and 27 October 1995.

²⁰ Course Report dated 21 November 1997.

of 1999. The detail of his evidence persuaded the Tribunal, on the balance of probabilities, that he attended the camp as he had claimed.

50. In relation to the 2004–05 year, Mr Hogan estimated that he undertook in excess of 30 training days that year. His contention was that the 11.5 days allowed were mostly weekend parades. In fact, the Tribunal consulted a calendar and most were Mondays.

51. His evidence was that, by 2004, he had already transferred to the Adelaide University Pipes and Drums. He gave an account of the proposed dissolution of the band following an apparently unauthorised visit to the Edinburgh Military Tattoo in July/August 2004. It is clear that that attendance could not be counted as paid ARES service.

52. His evidence was that the band was due to perform at the passing out parade at Duntroon, which parades, the Tribunal understands, are held in June and December at the conclusion of the 18-month course.²¹ Instead, he said, he and others as available, spent two to three weeks moving all the band's equipment from Keswick Barracks to Hampstead Barracks. His evidence suggested he was so dispirited that, shortly thereafter, he set in train his transfer to the Standby Reserve. The pay records show regular 0.5 day attendances between August 2004 until the Christmas stand down²² and again from February 2005 until the end of June that year.²³ The Tribunal finds it unlikely that Mr Hogan undertook significantly more training days, in a two to three week block as he claimed, during December 2004 or June 2005 (the months of graduation), as this would be likely to overlap with the recorded days. Furthermore, the Tribunal had reservations that extensive block training days for the band would be approved, given the circumstances of the band's imminent closure, of which Mr Hogan gave evidence. As it noted that in the preceding enlistment year Mr Hogan had 38.83 days pay recorded, the Tribunal considers that he may have been mistaken as to the year in which the transfer of equipment occurred.

53. For these reasons the Tribunal could not be satisfied on the balance of probabilities that Mr Hogan had served the required 20 days in the 2004-05 year.

54. Mr Hogan stated that in his whole ARES career he never paraded for half a day (as allowed for 1998-99) or (a total of) two days (as allowed for 2005-06). The Tribunal accepts that, apart from his period in the Standby Reserve, it is unlikely that someone who had an ARES career paraded as infrequently as the records suggest. The Tribunal observes however, that there were documented examples of Mr Hogan's variable attendance. Mr O'Brien had observed that the 'Alchemy' records noted a period of non-effective service (NES) from 15 March 1999 to 6 December 1999, although Mr Hogan's absence at 3 consecutive parades prior to October 1999 was attributable to illness, which was apparently accepted by his chain of command. That still meant that there was a period when he had not consistently paraded. In relation to the 'personal occurrence report' dated 20 April 1999 noting that he had last paraded on 14 February 1999, Mr Hogan did not recall being absent for a period of time.

²¹ <https://army.defencejobs.gov.au/joining-and-training/officer-training-at-rmc>

²² 2, 9, 16, 18, 23, 30 August, 13, 20 September, 11 October, 15 November, 13, 20 December 2004.

²³ 21 February, 7 March, 18, 26, 29 April, 21, 23, 30 May, 6, 20 June 2005.

55. As to Mr Hogan's assertion that his pay was sometimes confused with another soldier the Tribunal accepts that Defence had made adequate enquiries as to the person's identity, given that Mr Hogan was unable to assist. The Tribunal observes that, in any event, the confusion would only have been relevant in the years before Mr Hogan's transfer to the Adelaide University Pipes and Drums.

56. The Tribunal accepts that throughout his service there had been errors with Mr Hogan's pay and that sometimes, for whatever reason, he would not be paid 'for months'. Although he said he complained to the platoon sergeant who, he understood referred it up the chain of command, he personally did not take it further. The Tribunal accepted Mr Hogan's account of being relatively unconcerned about being paid. Whilst plausible, it considered him to have been somewhat naïve, though, in his belief that the pay would be sorted out by his chain of command, without further checking if that in fact transpired. The Tribunal accepts that, at the time he was not impecunious and that, to his credit, he was not financially motivated in undertaking ARES service.

57. The Determination requires that the recorded days were to be remunerated, and, in that regard, Defence relied on Mr Hogan's pay records. The Tribunal had difficulty accepting the reliability of the records, given a number of errors that had occurred in the course of Defence's consideration of Mr Hogan's claim. Firstly, it appears that his qualifying days were initially calculated on a financial, rather than enlistment, year basis. Secondly, Mr O'Brien acknowledged errors relating to Mr Hogan's IET course in 1990 (a year not in dispute). Next, Defence acknowledged that the skills courses Mr Hogan undertook in August 1997 were omitted from his pay and attendance history and agreed to accept these days as qualifying service, although the year was not in dispute. Of greater concern was that Defence was unable to explain how the errors occurred.

58. Defence was also unable to explain entries in the pay records in relation to the 1998-99 year where for three half day attendances Mr Hogan was only allowed 0.5 days.

59. Mr O'Brien had acknowledged "gaps" in Mr Hogan's pay records between 25/07/1993 and 14/03/1994 (relevant mainly to the 1993-94 year), a period of nearly seven months. More striking is the period between 11/08/1998 and 07/12/99 (relevant mainly to the 1998-99 year) - a period of nearly 16 months. The Tribunal was not assisted by Defence's submission that Mr O'Brien's observation was nothing more than a statement of fact that Mr Hogan had not paraded during those periods.

60. The Tribunal considered that Defence's offer to adjust its records if Mr Hogan could provide some supporting evidence, would appear to amount to an admission that the pay records upon which it relied were not definitive. Similarly, it had offered to continue searching for the person with a similar name to Mr Hogan - and presumably cross reference those pay records - if Mr Hogan were able to provide further information to assist in identifying him. This approach suggested to the Tribunal that Defence was further likely to be prepared to change its view if there were persuasive evidence. If the pay records were definitive then no purpose would have been served in making that invitation to the Applicant.

61. Mr O'Brien also acknowledged that it was possible for pay anomalies to occur across areas with consolidated pay centres. While there was no evidence as to whether or not Mr Hogan was paid from a 'consolidated pay centre', the observation caused the Tribunal concern, in the context of the other anomalies.

62. The Regulation and Determination are clear and unequivocal in relation to the number of days of qualifying service and the Tribunal has no discretion in their application. The Tribunal must be satisfied on the balance of probabilities on the available evidence that Mr Hogan satisfies the eligibility criteria for the DSLM.

63. The Tribunal regarded Defence's assessment in relation to the reliability of the pay records for the period in question to be far from persuasive. Had the Tribunal been satisfied on the balance of probabilities in relation to Mr Hogan's attendances in relation to each of the three years in question, the multiple anomalies in the records may have been sufficient to satisfy the Tribunal that Mr Hogan reached the necessary total of 14 days paid ARES service in the 1994-95 and 1998-99 years nor 20 days in the 2004-05 year.

Finding

64. The Tribunal finds that Mr Hogan is not eligible for the DSLM as he did not complete a minimum of 15 years of qualifying service. Accordingly, the Tribunal finds that the decision of the Directorate is correct and is therefore affirmed.

DECISION

65. The Tribunal decided to affirm the decision that Mr Michael John Hogan is not eligible for the award of the Defence Long Service Medal.